

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue, Room 217
Rockville, Maryland 20850
www.montgomerycountymd.gov/boa/
(240) 777-6600**

Case No. A-6599

APPEAL OF RICHARD MCKENZIE

**RESOLUTION TO DISMISS APPEAL
AND REFUND A PORTION OF FILING FEE
(Resolution Adopted February 6, 2019)
(Effective Date of Resolution: February 13, 2019)**

Case No. A-6599 is an administrative appeal in which the Appellant charges administrative error on the part of the Department of Permitting Services' Division of Fire Prevention and Code Compliance and Division of Commercial Building Construction in their November 2, 2018, denial of Modification Permit Number 852797/Building Permit Number U/O 362972.

On January 24, 2019, the Board of Appeals received a letter withdrawing this appeal from Scott C. Wallace, Esquire, and Laura M. Tallerico, Esquire, who serve as counsel for the Appellant. Because a hearing has not yet been held in this case, the letter requests a refund of fifty percent (50%) of the filing fee under Rule 2.3(b) of the Board of Appeals Rules of Procedure. In addition, although received after the request for withdrawal, the Board is in receipt of a letter dated January 28, 2019, from Hilda Mertinko, expressing concern about compliance with fire safety requirements.


The Board of Appeals considered the withdrawal and refund request, as well as the letter from Ms. Mertinko, at its Worksession on February 6, 2019. Rule 2.3(b) of the Board of Appeals Rules of Procedure [Resolution No. 17-1223, adopted October 7, 2014], gives the Board the discretion to refund fifty percent (50%) of the filing fee in an administrative appeal on written request "if an application is withdrawn before a public hearing." Because the Appellant has withdrawn this appeal prior to the public hearing, the Board finds that this fifty percent (50%) refund request can be granted. In addition, the Board opens the record to accept the correspondence from Mr. Wallace and Ms. Tallerico, and from Ms. Mertinko.

On a motion by Bruce Goldensohn, seconded by Katherine Freeman, with John H. Pentecost, Chair, and Stanley B. Boyd, Vice Chair, in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. A-6599 is re-opened to receive the correspondence from Mr. Wallace and Ms. Tallerico, and from Ms. Mertinko; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that Case No. A-6599 is dismissed as withdrawn; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that \$110.00 shall be refunded to Richard McKenzie.


John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 13th day of February, 2019.


Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.